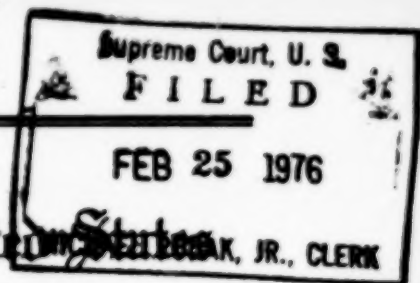


IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1975



No. 75-1083

M. C. MANUFACTURING CO., INC., AND  
UNIVERSAL AUTOMATIC MACHINE CO., INC.

*Petitioners,*

v.

TEXAS FOUNDRIES, INC., AND H/R PRODUCTS, INC.,

*Respondents.*

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**APPENDIX TO**  
**BRIEF IN OPPOSITION TO PETITION FOR**  
**WRIT OF CERTIORARI TO THE UNITED**  
**STATES COURT OF APPEALS FOR**  
**THE FIFTH CIRCUIT**

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BUREN JACKSON BRADSHAW  
WILLIAM R. PAKALKA  
800 Bank of the Southwest  
Building  
Houston, Texas 77002  
Telephone (713) 224-7070  
*Attorneys for Respondents*

*Of Counsel:*

FULBRIGHT & JAWORSKI  
Bank of the Southwest Building  
Houston, Texas 77002

ZELESKY, CORNELIUS, ROGERS  
BERRY & HALLMARK  
P. O. Drawer 1728  
403 South Chestnut Street  
Lufkin, Texas 75901

JOHNSON, HATHAWAY & JACKSON  
P. O. Box 119  
Tyler, Texas 75701

1  
In The  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

NO. 74-2246

M. C. MANUFACTURING COMPANY, INC., ET AL

V.

TEXAS FOUNDRIES, INC., ET AL

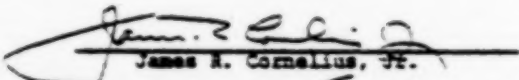
THE STATE OF TEXAS ;

COUNTY OF HARRIS ;

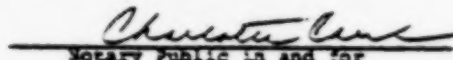
BEFORE ME, the undersigned authority, personally  
appeared James R. Cornelius, Jr., of Lufkin, Texas, who being  
duly sworn, deposes and says:

I am one of the attorneys of record for the Defendants-  
Appellants in the above-entitled cause. The facts stated in this  
affidavit are, within my personal knowledge, true and correct.

When we received instructions from the Clerk to reply  
to point 1 of Plaintiffs'-Appellees' Motion for Rehearing, which  
contained the hearsay affidavit asserting that Land-Air, Inc.,  
had withdrawn its bid, Mr. Mark Miller and I went to the Arsenal  
at Rock Island, Illinois (formerly at Joliet) and contacted the  
Contracting Officer who signed Contract DAAA-09-72-C-0208,  
Mr. Edward Janowski. He pulled and in our presence reviewed the  
Contract file and found that it contained no hint of an effort to  
withdraw Land-Air's bid, and he made an affidavit to that effect  
which is attached hereto. He also made an affidavit showing  
that all bidders were warned that any offer they make may become  
a binding contract simply by acceptance, and that there are  
strict regulations regarding withdrawal of bids. This affidavit  
is also attached.

  
James R. Cornelius, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME this 16 day of  
October, 1975.

  
Charlotte Case  
Notary Public in and for  
Harris County, Texas

CHARLOTTE CASE  
Notary Public in and for Harris County, Texas  
Attachment 1  
1 of 1

JPCJF10.1755

2  
THE STATE OF ILLINOIS

COUNTY OF Rock Island

BEFORE ME, the undersigned authority, on this day personally  
appeared EDWARD JANOWSKI, who, being by me first duly sworn, upon his  
oath states that he is over the age of eighteen years and in no way  
incapacitated to make this Affidavit, and that the following facts are  
true and correct:

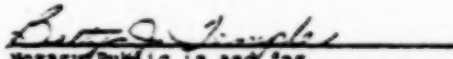
My name is Edward Janowski. I am a <sup>was a 2nd Lt. 1950-53</sup> Contracting  
Officer employed by the United States Army Munitions  
Command, sometimes referred to as MUCOM. I was formerly  
stationed at Joliet, Illinois, and am now stationed at  
Rock Island, Illinois. I was the Contracting Officer  
who signed the contract on behalf of the United States  
Government with M/V Products, Inc., known as No. DAAA  
-09-72-C-0208.

This contract resulted from an advertised solicitation  
for bids, being No. DAAA-09-72-S-0008 dated October 27,  
1971.

The solicitation DAAA-09-72-S-0008 sent to all bidders  
contained a caution sheet, a true and accurate copy of  
which is attached hereto, and marked Exhibit "A". It also  
contained "Solicitation Instructions and Conditions" known  
as Form JJ A, in two pages, containing 19 numbered para-  
graphs, and Exhibit "B" which is attached hereto and made  
a part hereof is an exact copy thereof.

  
Edward Janowski

SWORN TO AND SUBSCRIBED BEFORE ME by the said Edward Janowski  
this 16 day of October, 1975, to certify which witness my hand and  
seal of office.

  
Notary Public in and for  
County, Illinois

Attachment 2  
1 of 4

BEST COPY AVAILABLE

3  
UNITED STATES ARMY  
AMMUNITION PROCUREMENT AND SUPPLY AGENCY  
JOLIET, ILLINOIS 60436

OFFERORS INFORMATION CHECK LIST

CAUTION! THE OFFER YOU SIGN MAY BECOME A BINDING CONTRACT. PLEASE CHECK THE FOLLOWING IMPORTANT POINTS BEFORE SIGNING YOUR OFFER. THIS CHECK LIST IS FORWARDED FOR YOUR CONVENIENCE AND NEED NOT BE RETURNED TO THE GOVERNMENT WITH YOUR OFFER.

☐ **DELIVERIES:**

CAN YOU FULFILL THE PROMISED SCHEDULE?  
HAVE YOU CONSIDERED LEAD TIME FOR ALL RAW MATERIALS AND PURCHASED PARTS?  
HAVE YOU READ THE DEFAULT CLAUSE OF THE GENERAL PROVISIONS?

☐ **PRICES:**

HAVE YOU CHECKED YOUR COMPUTATIONS?

☐ **MODIFICATION OR WITHDRAWAL OF OFFER:**

HAVE YOU READ PARAGRAPHS 7 AND 8 OF STANDARD FORM 33-4 RELATIVE TO MODIFICATION OR WITHDRAWAL OF OFFER?

☐ **SPECIFICATIONS:**

DO THE ITEMS OFFERED MEET ALL SPECIFICATIONS AND SPECIFICATION REQUIREMENTS?  
HAVE YOU LISTED ANY DIFFERENCES?  
DO YOU HAVE THE CURRENT REQUIRED DRAWINGS AND SPECIFICATIONS?

☐ **INSPECTION REQUIREMENTS:**

HAVE YOU PROVIDED FOR NECESSARY TEST EQUIPMENT?  
HAVE YOU PLANNED FOR A GOOD INSPECTION SYSTEM?

☐ **PACKAGING:**

HAVE YOU READ THE PRESERVATION, PACKAGING, PACKING AND MARKING SPECIFICATIONS?  
HAVE YOU ASSIGNED FACILITIES TO COMPLY WITH PACKAGING SPECIFICATIONS?  
HAVE YOU MADE COMMITMENTS TO OBTAIN ADEQUATE FACILITIES?

☐ **POSTAGE:**

HAVE YOU PLACED SUFFICIENT POSTAGE ON THE ENVELOPE CONTAINING YOUR OFFER?  
DO YOU REALIZE THAT IT CANNOT BE ACCEPTED IF THERE IS "POSTAGE DUE"?  
DO YOU REALIZE THAT OFFERS RECEIVED LATE BECAUSE OF RETURN FOR POSTAGE CANNOT BE CONSIDERED?

☐ **SUBMISSION OF OFFER:**

HAVE YOU SIGNED THE ORIGINAL AND TWO COPIES OF YOUR OFFER?  
ARE YOU AWARE THAT THE LABEL ENCLOSED IS TO BE USED FOR READY IDENTIFICATION PURPOSES ON THE ENVELOPE CONTAINING YOUR OFFER?

☐ **NO OFFER:**

IF YOU DO NOT INTEND TO SUBMIT AN OFFER, HAVE YOU FOLLOWED THE INSTRUCTIONS OF PARAGRAPH 6, STANDARD FORM 33-4?  
ARE YOU AWARE THAT THE LABEL ENCLOSED SHOULD NOT BE USED IF A "NO OFFER" IS TO BE SUBMITTED?  
DO YOU REALIZE THAT CONSISTENT NON-RESPONSE TO SOLICITATIONS MAY RESULT IN REMOVAL FROM THE AMMUNITION PROCUREMENT AND SUPPLY AGENCY'S MAILING LIST?

SHAW-WALKER (REV AUG 67)

A APSA - JOLIET, ILL.

Attachment 2  
2 of 4

4  
SOLICITATION INSTRUCTIONS AND  
CONDITIONS

**1. DEFINITIONS.**

As used herein:  
(a) The term "solicitation" means Invitation for Bids (IFB) where the procurement is advertised, and Request for Proposal (RFP) where the procurement is negotiated.  
(b) The term "offer" means bid where the procurement is advertised, and proposal where the procurement is negotiated.  
(c) For purposes of this solicitation and Block 1 of Standard Form 33, the term "advertising" includes Small Business Restricted Advertising and other types of restricted advertising.

**2. PREPARATION OF OFFERS.**

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror's risk.  
(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the solicitation and print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Errors or other changes must be initiated by the person signing the offer. Offers signed by an agent are to be accompanied by evidence of his authority unless such evidence has been previously furnished to the issuing office.  
(c) Unit price for each unit offered shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item offered. In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.  
(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.  
(e) Offeror must state a definite time for delivery of supplies or for performance of services unless otherwise specified in the solicitation.  
(f) Time, if stated as a number of days, will include Saturdays, Sundays and holidays.  
(g) Code books are for Government use only.

**3. EXPLANATION TO OFFERORS.** Any explanation desired by an offeror regarding the meaning or interpretation of the solicitation, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished to all prospective offerors as an amendment of the solicitation, if such information is necessary to offerors in submitting offers on the solicitation or if the lack of such information would be prejudicial to uninformed offerors.

**4. ACKNOWLEDGMENT OF AMENDMENTS TO SOLICITATIONS.** Receipt of an amendment to a solicitation by an offeror must be acknowledged (a) by signing and returning the amendment, (b) on the reverse of Standard Form 33, or (c) by letter or telegram. Such acknowledgment must be received prior to the hour and date specified for receipt of offers.

**5. SUBMISSION OF OFFERS.**

(a) Offers and modifications thereof shall be enclosed in sealed envelopes and addressed to the office specified in the solicitation. The offeror shall show the hour and date specified in the solicitation for receipt, the solicitation number, and the same and address of the offeror on the face of the envelope.  
(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by telegraphic notice, provided such notice is received prior to the hour and date specified for receipt. (However, see par. 8.)  
(c) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at offeror's request and expense, unless otherwise specified by the solicitation.

**6. FAILURE TO SUBMIT OFFER.** If no offer is to be submitted, do not return the solicitation unless otherwise specified. A letter or postcard should be sent to the issuing office advising whether future solicitations for the type of supplies or services covered by this solicitation are desired. Failure of the recipient to offer, or to notify the issuing office that future solicitations are desired, may result in removal of the name of such recipient from the mailing list for the type of supplies or services covered by the solicitation.

33-303

NOTE: Unless otherwise specified, this form (SF-33A) is designated as Form 3 and 4 of this solicitation.

**7. MODIFICATION OR WITHDRAWAL OF OFFERS.**

(a) If this solicitation is advertised, offers may be modified or withdrawn by written or telegraphic notice received prior to the exact hour and date specified for receipt of offers. An offer also may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the offer, but only if the withdrawal is made prior to the exact hour and date set for receipt of offers. (However, see par. 8.)

(b) If this solicitation is negotiated, offers may be modified (subject to par. 8, when applicable) or withdrawn by written or telegraphic notice received at any time prior to award. Offers may be withdrawn in person by an offeror or his authorized representative, provided his identity is made known and he signs a receipt for the offer prior to award.

**8. LATE OFFERS AND MODIFICATIONS OR WITHDRAWAL.** (This paragraph applies to all advertised solicitations. In the case of Department of Defense negotiated solicitations, it shall also apply to late offers and modifications (other than the normal revisions of offers by selected offerors during the usual conduct of negotiations with such offerors) but not to withdrawals of offers. Unless otherwise provided, this paragraph does not apply to negotiated solicitations issued by civilian agencies.)

(a) Offers and modifications of offers (or withdrawals thereof, if this solicitation is advertised) received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless: (1) they are received before award is made; and either (2) they are sent by registered mail, or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained and it is determined by the Government that the late receipt was due solely to delay in the mails for which the offeror was not responsible; or (3) if submitted by mail (or by telegram if authorized) it is determined by the Government that the late receipt was due solely to misaddressing by the Government after receipt at the Government installation; provided, that timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification of an offer which makes the terms of an otherwise successful offer more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Offerors using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late offer was timely mailed.

(c) The time of mailing of late offers submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the offeror furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the offeror which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the offer shall not be considered.

**9. DISCOUNTS.** (a) Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers.

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or point of embarkation when delivery and

Attachment 2  
3 of 4



acceptance are at either of these points, or from the date contract invoice or voucher is received in the office specified by the Government, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

**10. AWARD OF CONTRACT.** (a) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(c) The Government may accept any item or group of items of any offer, unless the offeror qualifies his offer by specific limitations. **UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED AT THE UNIT PRICES OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER.**

(d) A written award (or Acceptance of Offer) mailed (or otherwise furnished) to the successful offeror within the time for acceptance specified in the offer shall be deemed to result in a binding contract without further action by either party.

The following paragraphs (e) through (h) apply only to negotiated solicitations.

(e) The Government may accept within the time specified therein, any offer (or part thereof, as provided in (c) above), whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Government prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.

(f) The right is reserved to accept other than the lowest offer and to reject any or all offers.

(g) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.

(h) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.

**11. GOVERNMENT-FURNISHED PROPERTY.** No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the solicitation.

**12. LABOR INFORMATION.** General information regarding the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 33-35), the Contract Work Hours Standards Act (40 U.S.C. 327-370), and the Service Contract Act of 1965 (41 U.S.C. 351-357) may be obtained from the Department of Labor, Washington, D.C. 20210, or from any regional office of that agency. Requests for information should include the solicitation number, the name and address of the issuing agency, and a description of the supplies or services.

**13. SELLER'S INVOICES.** Invoices shall be prepared and submitted in quadruplicate (one copy shall be marked "original") unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, name, quantity, unit prices, and

extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

**14. SMALL BUSINESS CONCERN.** A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is submitting offers on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

**15. CONTINGENT FEE.** If the offeror, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage for in any company or person consequent upon or resulting from the award of this contract, he shall furnish, in duplicate, a completed Standard Form 119, Contractor's Statement of Contingent or Other Fee. If offeror has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his offer with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this offer.

**16. PARENT COMPANY.** A parent company for the purpose of this offer is a company which either owns or controls the activities and basic business policies of the offeror. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or vote basic business policy decisions of the offeror, such other company is considered the parent company of the offeror. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.

**17. EMPLOYER'S IDENTIFICATION NUMBER.** (Applicable only to advertised solicitations.) The offeror shall insert in the applicable space on the offer form, if he has no parent company, his own Employer's Identification Number (E.I. No.) (Federal Social Security Number used on Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941), or, if he has a parent company, the Employer's Identification Number of his parent company.

**18. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION.** (a) This certification on the offer form is not applicable to a foreign offeror submitting an offer for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(b) An offer will not be considered for award where (a)(1), (a)(3), or (b) of the certification has been deleted or modified. Where (a)(2) of the certification has been deleted or modified, the offer will not be considered for award unless the offeror furnishes with the offer a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

**19. ORDER OF PRECEDENCE.** In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule; (b) Solicitation Instructions and Conditions; (c) General Provisions; (d) other provisions of the contract, whether incorporated by reference or otherwise; and (e) the specifications.

## THE STATE OF ILLINOIS

COUNTY OF Rock Island

BEFORE ME, the undersigned authority, on this day personally appeared EDWARD JANOWSKI, who, being by me first duly sworn, upon his oath states that he is over the age of eighteen years and in no way incapacitated to make this Affidavit, and that the following facts are true and correct:

My name is Edward Janowski. I was a Contracting Officer employed by the United States Army Munitions Command, sometimes referred to as MOCOM. I was formerly stationed at Joliet, Illinois, and am now stationed at Rock Island, Illinois. I was the Contracting Officer who signed the contract on behalf of the United States Government with E/R Products, Inc., known as No. DAAA-09-72-C-0208.

I have searched the file on E/R Products, Inc. on Contract DAAA-09-72-C-0208 and find that it does not contain any written statement, memorandums, letter, telegram, or indication of any kind to the effect that Land-Air, Inc. requested to withdraw its bid.

The attached Exhibits A, B, C and D are true copies of documents found in said file. Exhibit A is a telephone or verbal conversation record dated 7 December 1971. Exhibit B, is a telephone or verbal conversation record dated 17 December 1971. Exhibit C is a letter I wrote Land-Air, Inc. 7 Jan, 1972 informing them that E/R Products received the award. I would not have written this letter if I knew Land-Air, Inc. had withdrawn its bid. Exhibit D is a Price Evaluation Report.

Edward Janowski  
Edward Janowski

SWORN TO AND SUBSCRIBED BEFORE ME by the said Edward Janowski this 9 day of October, 1975, to certify which witness my hand and seal of office.

Robert J. Janek  
Notary Public in and for  
Rock Island County, Illinois

TELEPHONE OR VERBAL CONVERSATION RECORD		DATE
For use of this form, see AR 145-13; the proponent agency is The Adjutant General's Office.		7 Dec 71
SUBJECT OF CONVERSATION <i>Pre-Award Survey</i>		
INCOMING CALL		
PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED		
OFFICE	PHONE NUMBER AND EXTENSION	
OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
SUMMARY OF CONVERSATION		
<p>Requested advance work be done on Pre-award for Universal + Land Air. Informed him 1524 was forthcoming and we needed it NLT 20 Dec. 71. He indicated it would be ready.</p> <p><u>Later</u></p> <p>Called back to inform pre-award monitor that Land-Air had been declared non-responsive. Told him to drop Land-Air pre award.</p> <p style="text-align: center;">Exhibit A</p>		

DA FORM 751

REPLACES EDITION OF 1 FEB 58 WHICH WILL BE USED.

2 APR 66 1000 1000 1000 1000

Attachment 3  
2 of 8

TELEPHONE OR VERBAL CONVERSATION RECORD		DATE
For use of this form, see AR 145-13; the proponent agency is The Adjutant General's Office.		17 Dec 71
SUBJECT OF CONVERSATION <i>Pre-Award Survey, Land-Air, Inc.</i>		
INCOMING CALL		
PERSON CALLING	ADDRESS	PHONE NUMBER AND EXTENSION
PERSON CALLED		
OFFICE	PHONE NUMBER AND EXTENSION	
OUTGOING CALL		
PERSON CALLING	OFFICE	PHONE NUMBER AND EXTENSION
PERSON CALLED	ADDRESS	PHONE NUMBER AND EXTENSION
SUMMARY OF CONVERSATION		
<p>Reference request for advance action on Pre-award for Land-Air, Inc. &amp; recall on dropping action on Land Air survey due to non-responsiveness, 7 Dec. 71.</p> <p>Advice that amendments were acknowledged but inadvertently placed with "no bids reply". That they were then responsive but preliminary analysis indicates Land-Air, Inc. will not be the lowest evaluated bidder.</p> <p>Want the information given command get out that "Land-Air, Inc. was non-responsive".</p> <p>Mr. Turner assured me that no award regarding non-responsiveness of Land-Air would get out of their office. <del>He</del> advised him that we will not institute pre-award action at this point however since preliminary analysis looks like they are not actually pre-bidder. <i>Exhibit B</i></p>		

DA FORM 751

REPLACES EDITION OF 1 FEB 58 WHICH WILL BE USED.

2 APR 66 1000 1000 1000 1000

Attachment 3  
3 of 8



9  
ANSMU-PP-PCGC

87 JAN 872

Land Air, Inc.  
5801 E. Rosejale  
Ft Worth, Texas 76112

Gentlemen:

Reference is made to your bid submitted in response to  
Invitation for Bid DAAA09-72-3-0003.

The following information regarding contract award resulting  
from the above referenced Invitation for Bid is furnished for  
your information:

- a. Number of prospective contractors solicited: 159
- b. Number of bids received: 16
- c. Bidder receiving award: H/R Products Inc.  
Indianapolis, Indiana
- d. Item: Lifting Plug, Type G
- e. Quantity: 1,984,800
- f. Price and Shipping Method: \$1.476 FOB ORIGIN

Your interest in defense contracting is appreciated.

Sincerely,

EDWARD JANOWSKI  
Procuring Contracting Officer

*Exhibit C*

Attachment 3

4 of 8

10

For use of this form, see AR 140-15; the procuring agency is The Adjutant General's Office.

REFERENCE OR OFFICE SYMBOL ANSMU-PP-PCAC	SUBJECT Price Evaluation Report, Plug, Lifting, Type G #155MM Projectile, IFB DAAA09-72-3-0008 1,984,800 each
TO ANSMU-PP-PCGC	FROM ANSMU-PP-PCAC
DATE 15 Dec 71 Mr. Fox/ps/2798	

CMT 1

**I. General Information:**

a. This analysis was made in accordance with the provisions of ASPR 2-103(iv). ASPR 1-706, PFM 2-4 in reply to your request dated 6 December 1971.

b. IFB DAAA09-72-3-0008 is a 100% small business set aside procurement of 1,984,800 each Lifting Plugs, Type G for 155MM Projectile. The solicitation provides for an option quantity of 50% of the basic quantity.

c. The solicitation package provides for an alternate A quantity of 1,984,800 units and an alternate B quantity of 992,400. The bid package states that bids may be submitted on alternate A quantity or alternate B quantity or any quantity cited herein individually. The package further indicates that awards will be made to the lowest bidder or bidders. The final criterion is that in the event that two awards are made for the alternate B quantities, the total cost must be lower than the total cost for one award on the alternate A quantity.

d. Shown below are the monthly schedules for both alternate A and alternate B quantities:

Feb 72	250,000	125,000
Mar 72	250,000	125,000
Apr 72	250,000	125,000
May 72	200,000	100,000
Jun 72	200,000	100,000
Jul 72	200,000	100,000
Aug 72	200,000	100,000
Sep 72	200,000	100,000
Oct 72	200,000	100,000
Nov 72	34,800	17,400

e. Our examination was limited to the following four bids which you submitted to us for evaluation. These were the lowest bids submitted and are considered to be the only ones that should be used in calculating the least expensive pattern of awards:

AMS Manufacturing Inc.  
H/R Products  
Land Air Inc.  
Universal Automatic Machine Co.

*Exhibit D*

**FOR OFFICIAL USE ONLY**

Protective Markings may be removed upon contract finalization or withdrawal of requisition.

DA FORM 2496  
1 FEB 62

REPLACES DD FORM 24, EXISTING SUPPLIES OF WHICH WILL BE  
ISSUED AND USED UNTIL 1 FEB 63 UNLESS SOONER EXHAUSTED.

7 GPO : 1960-100-410

Attachment 3  
5 of 8

AMSMU-PP-PCAC

SUBJECT: Price Evaluation Report, Plug, Lifting, Type G 2/153MM, Projectile,  
IFB DAAA09-72-B-0008, 1,984,800 each

2. Purpose:

The purpose of this analysis is to determine if an award can be made for 1,984,800 each Type G Lifting Plug, by utilizing price analysis techniques.

3. Scope:

a. In accordance with the terms and conditions set forth in IFB DAAA09-72-B-0008, the following criteria was used for our evaluation of the bids received.

(1) Item cost bid

(2) Transportation. (Since destinations are unknown, transportation was not considered as an evaluation factor).

(3) Discount for prompt payment.

(4) Price reduction for waiver of first article sample requirement. (Only Universal Automatic Machine Incorporated offered a price reduction for waiver of first article sample requirement. You informed us that they are eligible for waiver, therefore, we used \$.0005 as a reductive evaluation factor).

(5) Option Quantity Evaluation. The solicitation provides for the following methods of option evaluation.

(a) If the Government elects to exercise an option simultaneously with award, bid or proposals will be evaluated for purposes of award on the basis of the total price for the basic quantity and the option quantity exercised with award.

(b) Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of the options will not obligate the Government to exercise the option or options. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non responsive.

*Exhibit D*  
2

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AMSMU-PP-PCAC

SUBJECT: Price Evaluation Report, Plug, Lifting, Type G 2/153MM, Projectile,  
IFB DAAA09-72-B-0008, 1,984,800 each

(c) We felt that there was an inconsistency in the solicitation package in that it contained two separate clauses for option evaluation. Accordingly we solicited the aid of Mr. John Softcheck, Chief Legal Counsel. We were advised to evaluate the package by three methods. First, by determining the total cost for the least expensive pattern of awards by utilizing basic quantities only. Second, by determining the total cost for the least expensive pattern of awards by utilizing basic quantities and simultaneous option quantities if the simultaneous option quantities were less than the total option quantities. Finally, by determining the total cost for the least expensive pattern of awards by using basic quantities plus total option quantities. Mr. Softcheck is of the opinion that if all three methods lead to the same conclusion in the award pattern then the inconsistency in the package is not pertinent.

(d) You verbally told us that there will be no simultaneous option exercise. Accordingly, in our opinion, this eliminates case two above. Therefore, we addressed our evaluation to cases one and three above.

(e) The results of our evaluation show that in both cases it is less expensive to award the basic quantity of 1,984,800 Type G Lifting Plugs to H/R Products. Accordingly, in this case we have concluded that the inconsistency in the option clauses used in the solicitation package is not pertinent.

(6) Government Furnished Property. (None of the four bidders used in our evaluation indicated in the solicitation package that they would use Government Property that might be in their possession for the performance of this effort. Further, the cognizant Contract Specialist indicated that no additional Government property would be offered. Accordingly, GFP was not used as an evaluating factor).

b. Our evaluation includes the comparison of total evaluated prices and total costs as shown on Exhibits A through D attached. Further, we have shown below a listing of recent procurements for comparative purposes. Finally, we show the bid prices received on this solicitation for comparison purposes.

*Exhibit D*  
3

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AMSPU-PP-PCAC

SUBJECT: Price Evaluation Report, Plug, Lifting, Type G 2/155MM, Projectile,  
 IFS DAAA09-72-B-0008, 1,984,800 each

Contractor	Contract/ Solicitation	Quantity	Maximum Monthly Rate	Unit Price
Universal Automatic Machine Co.	72-C-0133	732,040	200,000	\$ .4938
Universal Automatic Machine Co.	70-C-0419	172,100	200,000	.4933
H/R Products	70-C-0344	204,095	204,095	.548
Land Air Inc.	70-C-0446	130,000	130,000	.579
A.M.S. Manufacturing Inc.	72-B-0008	1,984,800	250,000	.518
H/R Products, Inc.	72-B-0008	1,984,800	250,000	.476
Land Air, Inc.	72-B-0008	1,984,800	250,000	.488
Universal Automatic Machine Co.	72-B-0008	1,984,800	250,000	.4928
H/R Products, Inc.	72-B-0008	992,400	125,000	.485
Land Air, Inc.	72-B-0008	992,400	125,000	.488
Universal Automatic Machine Co.	72-B-0008	992,400	125,000	.4928

c. Based on our examination of bid prices received, and historical prices, we consider that competition is adequate.

#### 4. Conclusion:

a. Based on adequate competition, coupled with favorable price comparisons, we recommend that the following firm fixed price award be placed:

Contractor	Item	Quantity	Price	F.O.B.
H/R Products Inc.	Lifting Plug for 155MM, Type G	1,984,800	\$ .476	Orig Mtr.

b. It is noted that H/R Products offered a discount for prompt payment of 1/2 of 1%.

c. The above recommendation is subject to H/R Products receipt of a favorable pre award survey.

#### d. Option Quantity

The option price of \$.473 is considered acceptable for inclusion in the contract. However, it is suggested that the tests of reasonableness prescribed by ASPR 1-1505 be accomplished prior to the award of option quantities.

4 Incl  
 Exhibits A through D

*Farrell R. Fox, Jr.*  
 FARRELL R. FOX, Jr.  
 Contract Price Analyst

APPROVED:

*Michael A. Davies*  
 MICHAEL A. DAVIES  
 Chief, Contr. Price and Cost Anal Sec.

FOR OFFICIAL USE ONLY

Typed verbatim copy of handwritten portion of Exhibit A

7 Dec. 71

Pre-Award Survey

Jo Taylor

PCGC

10:00 a.m.  
 2534

Pre-award monitor

DCHSR, Dallas

940-1421

Requested advance work be done on Pre-award for Universal & Land Air. Informed him 1524 was forthcoming and we needed it NLT 20 Dec. 71. He indicated it would be ready.

#### Later

Called back to inform pre-award monitor that Land-Air had been declared non-responsive. Told him to drop Land-Airs pre award.

Exhibit A



Typed verbatim copy of handwritten portion of Exhibit B

17 Dec. 71

Pre-Award Survey/Land-Air, Inc.

L. Papineau

PCGC

2534

Mr. Turner, pre award monitor  
Pre-Award Monitor - DCASR, Dallas,

940-1421

Reference request for advance action on Pre-Award Land-Air, Inc. & recall on dropping action on Land-Air Survey due to non-responsiveness, 7 Dec. 71 advise that amendments were acknowledged but inadvertently placed with "no bid replies". That they were then responsive but preliminary analysis indicates Land-Air, Inc. will not be the lowest evaluated bidder.

Want this information given so no word gets out that "Land-Air, Inc. was non-responsive.

Mr. Turner assured me that no award regarding non-responsiveness of Land-Air would get out of their office. Advised him that we will not institute pre-award action at this point however since preliminary analysis looks like they are not actually low bidder anyhow.

Exhibit B

Attachment 4  
2 of 2